

1 BILL NO. S-81-02-25

2 SPECIAL ORDINANCE NO. S-5781

3
4 AN ORDINANCE approving a contract for
5 Sewer Improvement Resolution No. 347-80
6 between the City of Fort Wayne, Indiana,
7 and Richard Ness Excavating & Trucking
8 Co., Inc. for installation of a sanitary
9 sewer.

10 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
11 FORT WAYNE, INDIANA:

12 SECTION 1. That a certain contract dated January 21,
13 1981, between the City of Fort Wayne, Indiana, by and through
14 its Mayor and the Board of Public Works, and Richard Ness Ex-
15 cavating & Trucking Co., Inc., Contractor for:

16 the construction of an 8 inch and 10
17 inch local sanitary sewer in the ad-
18 dition of Poplar Ridge,

19 under Board of Public Works Sewer Improvement Resolution No.
20 347-80, at a total cost of \$181,495.25, all as more particu-
21 larly set forth in said contract which is on file in the Of-
22 fice of the Board of Public Works and is by reference incor-
23 porated herein and made a part hereof, be and the same is in
24 all things hereby ratified, confirmed and approved.

25 SECTION 2. That this Ordinance shall be in full force
26 and effect from and after its passage and approval by the
27 Mayor.

28 
COUNCILMAN

29 APPROVED AS TO FORM AND
30 LEGALITY FEBRUARY 5, 1981.

31 
32 JOHN E. HOFFMAN CITY ATTORNEY

Read the first time in full and on motion by Burns,
seconded by V. Schmidt, and duly adopted, read the second time
by title and referred to the Committee City Utilities (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, 19____, the _____ day of _____,
at _____ o'clock _____ M., E.S.T.

DATE: 2-17-81

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Burns,
seconded by V. Schmidt, and duly adopted, placed on its
passage. PASSED (~~LOST~~) by the following vote:

| | AYES | NAYS | ABSTAINED | ABSENT | TO-WIT: |
|-------------|----------|-------|-----------|----------|---------|
| TOTAL VOTES | <u>8</u> | _____ | _____ | <u>1</u> | _____ |
| BURNS | <u>✓</u> | _____ | _____ | _____ | _____ |
| EISBART | <u>✓</u> | _____ | _____ | _____ | _____ |
| GIAQUINTA | <u>✓</u> | _____ | _____ | _____ | _____ |
| NUCKOLS | <u>✓</u> | _____ | _____ | _____ | _____ |
| SCHMIDT, D. | _____ | _____ | _____ | <u>✓</u> | _____ |
| SCHMIDT, V. | <u>✓</u> | _____ | _____ | _____ | _____ |
| SCHOMBURG | <u>✓</u> | _____ | _____ | _____ | _____ |
| STIER | <u>✓</u> | _____ | _____ | _____ | _____ |
| TALARICO | <u>✓</u> | _____ | _____ | _____ | _____ |

DATE: 2-24-81

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) No. L-57-81
on the 24th day of February, 19 81.

Charles W. Westerman ATTEST:

(SEAL)

CHARLES W. WESTERMAN - CITY CLERK

John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 25th day of February, 19 81, at the hour of
11:30 o'clock A. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 5th day of March
19 81, at the hour of 4 o'clock P. M., E.S.T.

Winfield C. Moses, Jr.
WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-81-02-25

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving a contract for Sewer Improvement Resolution
No. 347-80 between the City of Fort Wayne, Indiana, and Richard
Ness Ecxcavating & Trucking, Inc. for installation of a
sanitary sewer

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE pass PASS.

PAUL M. BURNS, CHAIRMAN

VIVIAN G. SCHMIDT, VICE CHAIRMAN

BEN A. EISBART

SAMUEL J. TALARICO

ROY J. SCHOMBURG

Paul M. Burns
Vivian G. Schmidt

Ben A. Eisbart

Samuel J. Talarico

Roy J. Schomburg

CONCURRED IN

DATE 2/24/81 CHARLES W. WESTERMAN, CITY CLERK

CONTRACT NO. 347-80

THIS CONTRACT made and entered into in triplicate this 21 day of January, 1981, by and between RICHARD NESS EXCAVATING AND TRUCKING, INC. *INC.* herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor, and the Board of Public Works herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the construction of the following:

MAIN LINE

Beginning at an existing manhole located 35± LF north of and 550± LF east of the centerline intersection of Retha Drive and Voetter Drive; thence meandering northeasterly along the ditch 1,115± LF to a proposed manhole located 85± LF south of and 20± LF west of the centerline intersection of Idlebrook Drive and Rewill Drive; thence southerly along Rewill Drive 2,080± LF terminating at a proposed manhole located 370± LF north of and 20± LF west of the centerline intersection of Rewill Drive and Illinois Road, formerly State Road #14.

LATERAL #1

Beginning at a proposed manhole located 370± LF north of and 20± LF west of the centerline intersection of Rewill Drive and Illinois Road formerly State Road #14; thence easterly 275± LF terminating at a proposed manhole located 370± LF north of and 255± LF east of the centerline intersection of Rewill Drive and Illinois Road, formerly State Road #14.

LATERAL #2

Beginning at a proposed manhole located 370± LF north of and 20± LF west of the centerline intersection of Rewill Drive and Illinois Road formerly State Road #14; thence westerly 125± LF terminating at a proposed cleanout structure located 370± LF north of and 145± LF west of the centerline intersection of Rewill Drive and Illinois Road, formerly State Road #14.

LATERAL #3

Beginning at an existing manhole located 35± LF north of and 10± LF west of the centerline intersection of Retha Drive and Voetter Drive; thence southerly along Voetter Drive 1,175± LF terminating at a proposed cleanout structure located 1,140± LF south of and 25± LF west of the centerline intersection of Retha Drive and Voetter Drive.

LATERAL #4

Beginning at an existing manhole located 235± LF north of and 40± LF east of the centerline intersection of Voetter Drive and Illinois Road formerly State Road #14; thence meandering westerly along Voetter Drive 625± LF terminating at a proposed manhole located 585± LF west of and 260± LF north of the centerline intersection of Illinois Road, formerly State Road #14 and Voetter Drive.

Said sewer shall be 8" and 10" in diameter.

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11072, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of \$181,495.25. In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

| | | |
|--|---|----------|
| 10" Sewer Pipe | Thirteen dollars and 84/100 | 13.84 |
| 8" Sewer Pipe | Twelve dollars and 57/100 | 12.57 |
| STD M-H Type I-A or J | One thousand one hundred dollars and no/100 | 1,100.00 |
| STD M-H Type VI-A | One thousand five hundred dollars and no/100 | 1,500.00 |
| STD Cleanout | Three hundred dollars and no/100 | 300.00 |
| 6" "T" or "WYE" | Forty-eight dollars and no/100 | 48.00 |
| 6" Building Sewer (Not Grant Fundable) | Eight dollars and no/100 | 8.00 |
| STD City of Fort Wayne Tap Permit (Not Grant Fundable) | Thirty-five dollars and no/100 | 35.00 |
| #53 or #73 Special Backfill | Ten dollars and no/100 | 10.00 |
| Special Backfill | Eight dollars and no/100 | 8.00 |
| 6" Stone and Gravel | Two dollars and no/100 | 2.00 |
| 4" Deep Strength Asphalt (Driveways) | Twenty-one dollars and no/100 | 21.00 |
| 6" Concrete Drive | Fifteen dollars and no/100 | 15.00 |
| Double Chip & Seal | One dollar and 75/100 | 1.75 |
| Guard Rail Replacement | Four dollars and no/100 | 4.00 |
| Seeding & 1" Mulch | No dollars and 70/100 | 0.70 |
| 2'x1'x20' Concrete Encasement | One hundred fifty dollars and no/100 per lump sum | 150.00 |
| 6"-12" Field Tile Replacement | Eight dollars and no/100 | 8.00 |
| 12"-15" Culvert Replacement w/headwalls | Fifteen dollars and no/100 | 15.00 |
| Base Stabilization | Eleven dollars and no/100 | 11.00 |
| Tree & Brush Removal | No dollars and no/100 | 0.00 |

ARTICLE 3. PROGRESS PAYMENTS

Payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this Contract.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Section 14 of the Compensation Act (I.C. 22-3-2-1).

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978, a copy of which Section is attached and incorporated herein and made a part hereof. (NE/1 - NE/3)

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay which ever is the highest of Federal, State, and Local wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Chapter 319 of the Acts of the General Assembly of the State of Indiana, of 1935, attached hereto and made a part hereof. (WR/1 through WR/34).

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of this contract as if hereto attached or herein repeated:

- A. Advertisement for Bids, for Contract No. 347-80.
- B. Instructions to Bidders for Contract No. 347-80.
- C. Contractor's Proposal Dated December 16, 1980.
- D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11072.
- E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department.
- F. Federal Contract Provisions.
- G. Workmen's Compensation Act (I.C. 22-3-2-1).
- H. Non Discrimination of labor General Ordinance No. G-34-78 (as amended).
- I. Prevailing wage scale.
- J. Performance Bond.
- K. Labor and Material Payment Bond.
- L. Comprehensive Liability Insurance Coverage.
- M. Application for Cut Permit.
- N. Escrow Agreement.
- O. Notice of Award.
- P. Notice to Proceed.
- Q. Change Order.
- R. Notice of Final Acceptance.
- S. Addendum No. 1
- T. D.N.R. Permits

ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall warrant all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.

ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insurer acceptable to owner showing personal injury and property damage coverages in an amount and of a type acceptable to owner. Insurance in force issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.2.4.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract and the work to be performed and materials to be furnished shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified within the contract in 720 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Environmental Protection Agency and Common Council of the City of Fort Wayne, Indiana, and should said Environmental Protection Agency or Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Richard Ness Excavating & Trucking, Inc.

BY: Paul Richard Ness, President

BY: Maureen M. Ness, Secretary

CITY OF FORT WAYNE, INDIANA

BY: Win Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

Richard D. Mueller
ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Mark L. Akers, Chairman

Robert Anderson Staten
Roberta Anderson Staten, Member

Herbert R. Gamache, Member

Approved by the Common Council of the City of Fort Wayne on 21 day of January, 19 81.

UNITED STATES FIDELITY AND GUARANTY COMPANY



(A Stock Company)

LABOR AND MATERIAL PAYMENT BOND

Approved by The American Institute of Architects

A. I. A. Document No. A-311 (February 1970 Edition)

KNOW ALL MEN BY THESE PRESENTS:

BOND NUMBER.....

That Richard Ness Excavating & Trucking, Inc.

..... as Principal,
hereinafter called Principal, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws
of the State of Maryland, Baltimore, Maryland as Surety, hereinafter called Surety, are held and firmly bound unto City of
Fort Wayne, Indiana

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of One Hundred
Eighty-One Thousand, Four Hundred Ninety-Five and 25/100 Dollars (\$181,495.25-----),
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated January 21 1981, entered into a contract with Owner for
Junk Ditch Area Sewer Improvements, Poplar Ridge Addition, Section I and II, Sanitary
Sewer Resolution #347-80
in accordance with drawings and specifications prepared by.....

(Here insert full name, title and address)

..... which contract is by reference made a part
hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all
claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this
obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material,
or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that
part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who
has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's
work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such
claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The
Owner shall not be liable for the payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the
following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the
last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy
the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or
performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope
addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business,
or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that
such service need not be made by a public officer.
- (b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood,
however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation
shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- (c) Other than in a state court of competent jurisdiction in and of the county or other political subdivision of the state in which the
project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part
thereof, is situated, and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive
of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the
amount of such lien be presented under and against this bond.

Signed and sealed this 21st day of January, 1981

RICHARD NESS EXCAVATING & TRUCKING, INC.

By Paul Richard Ness President
(Seal) Principal

UNITED STATES FIDELITY AND GUARANTY COMPANY

By John J. Harrison Attorney-in-fact
(Seal)

WITNESSES
WASTE, ZENT & RYE, INC. Agents
Gerald G. Sale
(Witness)

This bond is issued simultaneously with performance bond in favor of the Owner conditioned on the full and faithful performance of the Contract.

GENERAL POWER OF ATTORNEY

No. 90088

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Vicki L. Anderson

of the City of Fort Wayne, State of Indiana
its true and lawful attorney in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Vicki L. Anderson

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 16th day of November, A. D. 1979

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By Bertram W. Sealy, Jr.
Vice-President.

(SEAL)

(Signed) William J. Phelan
Assistant Secretary.

STATE OF MARYLAND, } ss:
BALTIMORE CITY, }

On this 16th day of November, A. D. 1979, before me personally came Bertram W. Sealy, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and William J. Phelan, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they, the said Bertram W. Sealy, Jr. and William J. Phelan were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 1982.

(SEAL) (Signed) Margaret M. Hurst
Notary Public.

STATE OF MARYLAND, }
BALTIMORE CITY, } Set.

I, William Allen, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 16th day of November, A. D. 1979

(SEAL) (Signed) William Allen
Clerk of the Superior Court of Baltimore City.

COPY OF RESOLUTION

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also, in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may be by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, **Richard Calder**, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

Vicki L. Anderson

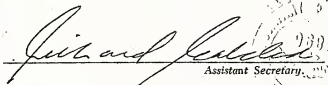
of **Fort Wayne, Indiana**, authorizing and empowering her to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

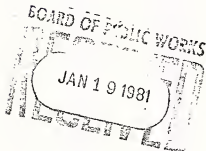

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on

(Date)

January 1, 1981


Assistant Secretary



UNITED STATES FIDELITY AND GUARANTY COMPANY



(A Stock Company)

PERFORMANCE BOND

Approved by The American Institute of Architects
A. I. A. Document No. A-311 (February 1970 Edition)

BOND NUMBER.....

KNOW ALL MEN BY THESE PRESENTS:

That Richard Ness Excavating & Trucking, Inc.
as Principal,
hereinafter called Contractor, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws
of the State of Maryland, Baltimore, Maryland, as Surety, hereinafter called Surety, are held and firmly bound unto City of
Fort Wayne, Indiana

as Oblige, hereinafter called Owner, in the amount of One Hundred Eighty-One Thousand, Four
Hundred Ninety-five and 25-100-----Dollars (\$181,495.25-----),
for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated January 21 1981, entered into a contract with Owner for
Junk Ditch Area Sewer Improvements, Poplar Ridge Addition, Section I and II,
Sanitary Sewer, Resolution, #347-80.

in accordance with drawings and specifications prepared by -----
(Here insert full name, title and address)
-----, which contract is by reference made a part
hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform
said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations
thereunder, the Surety may promptly remedy the default, or shall promptly

- (1) Complete the Contract in accordance with its terms and conditions, or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the low-
est responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder,
arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a
succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of
completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable
hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall
mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by
Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the
Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or
the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 21st day of January, 1981

In the presence of:

RICHARD NESS EXCAVATING & TRUCKING, INC.

By Paul Richard Ness President
Principal

UNITED STATES FIDELITY AND GUARANTY COMPANY

By Vicki L. Anderson (Seal)
Attorney-in-fact

WASTE ZENT & RYE, INC. Agents
(Witness)
(Witness)

GENERAL POWER OF ATTORNEY

No. 90088

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Vicki L. Anderson

of the City of Fort Wayne, State of Indiana,
its true and lawful attorney in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Vicki L. Anderson

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 16th day of November, A. D. 1979

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By Bertram W. Sealy, Jr.
Vice-President.

(SEAL)

(Signed) William J. Phelan
Assistant Secretary.

STATE OF MARYLAND, }
BALTIMORE CITY, }

On this 16th day of November, A. D. 1979, before me personally came Bertram W. Sealy, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and William J. Phelan, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they, the said Bertram W. Sealy, Jr. and William J. Phelan were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 1982.

(SEAL) (Signed) Margaret M. Hurst
Notary Public.

STATE OF MARYLAND }
BALTIMORE CITY, }

I, William Allen, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 16th day of November, A. D. 1979

(SEAL) (Signed) William Allen
Clerk of the Superior Court of Baltimore City.

That *Whereas*, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also, in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, **Richard Calder**, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

Vicki L. Anderson

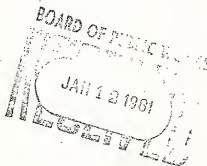
of **Fort Wayne, Indiana**, authorizing and empowering **her** to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on

(Date) January 1, 1981

Richard Calder
Assistant Secretary.



ccord

NAME AND ADDRESS OF AGENCY

Yaste, Zent & Rye, Inc.
P.O. Box 1367
Fort Wayne, Indiana 46801

NAME AND ADDRESS OF INSURED

Richard Ness Excavating & Trucking, Inc.
P.O. Box 455
Huntington, Indiana 46750

COMPANIES AFFORDING COVERAGES

COMPANY AFFORDING COVERAGES
A United States Fidelity & Guaranty
COMPANY AFFORDING COVERAGES
B American States Insurance Company
COMPANY AFFORDING COVERAGES
C
COMPANY AFFORDING COVERAGES
D
COMPANY AFFORDING COVERAGES
E

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time.

| COMPANY LETTER | TYPE OF INSURANCE | POLICY NUMBER | POLICY EXPIRATION DATE | Limits of Liability in Thousands (000) | | |
|----------------|--|---------------|------------------------|--|----------------------|----------------------|
| | | | | PER POLICY OCCURRENCE | PER POLICY AGGREGATE | PER POLICY AGGREGATE |
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMPREHENSIVE FORM <input checked="" type="checkbox"/> PREMISES, OPERATIONS, EXPLOSION AND COLLAPSE HAZARDS <input checked="" type="checkbox"/> UNDERGROUND HAZARDS <input checked="" type="checkbox"/> PRODUCTS, COMPLETED OPERATIONS HAZARD <input checked="" type="checkbox"/> CONTRACTUAL INSURANCE <input checked="" type="checkbox"/> BROAD FORM PROPERTY DAMAGE <input checked="" type="checkbox"/> INDEPENDENT CONTRACTORS <input checked="" type="checkbox"/> PERSONAL INJURY | MP 48263 | 11/21/81 | PERSONAL INJURY | \$ 500 | \$ 500 |
| | | | | PROPERTY DAMAGE | \$ 100 | \$ 200 |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> COMPREHENSIVE FORM <input checked="" type="checkbox"/> OWNED <input checked="" type="checkbox"/> HIRED <input checked="" type="checkbox"/> NON OWNED | MP 48263 | 11/21/81 | PERSONAL INJURY AND PROPERTY DAMAGE | \$ 500 | \$ 1,000 |
| | | | | PERSONAL INJURY AND PROPERTY DAMAGE COMBINED | \$ 500 | \$ 1,000 |
| B | EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM | SU 23423 | 12/20/81 | PERSONAL INJURY AND PROPERTY DAMAGE COMBINED | \$ 1,000 | \$ 1,000 |
| | | | | PERSONAL INJURY AND PROPERTY DAMAGE COMBINED | \$ 1,000 | \$ 1,000 |
| A | WORKERS' COMPENSATION and EMPLOYERS' LIABILITY OTHER | 1-3900-777575 | 11/21/81 | PERSONAL INJURY AND PROPERTY DAMAGE COMBINED | \$ 100 | \$ 100 |
| | | | | PERSONAL INJURY AND PROPERTY DAMAGE COMBINED | \$ 100 | \$ 100 |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES

ANY AND ALL OPERATIONS OF THE NAMED INSURED.

Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER

City of Fort Wayne - Sewer Dept.
One Main Street
City/County Building
Fort Wayne, IN 46801

12/19/80

Gerard A. Dale
AUTHORIZED REPRESENTATIVE

"APPARENT" LOW BIDDERS
JUNK DITCH

| <u>RESOLUTION</u> | <u>CONTRACTOR</u> | <u>BID</u> | <u>ENGINEER'S ESTIMATE</u> |
|-------------------|---------------------|----------------------|----------------------------|
| 341-80 | Winzeler Excavating | \$ 644,070.50 | \$ 783,311.00 |
| 342-80 | Winzeler Excavating | \$ 1,282,562.00 | \$ 1,514,839.00 |
| 345-80 | Ness Excavating | \$ 392,195.30 | \$ 590,258.75 |
| 347-80 | Ness Excavating | \$ 181,495.25 | \$ 278,685.00 |
| 348-80 | Winzeler Excavating | \$ 652,385.05 | \$ 1,075,538.25 |
| 349-50 | T-G Excavating | \$ 236,652.90 | \$ 343,737.50 |
| 350-50 | Ness Excavating | \$ 166,972.75 | \$ 238,227.25 |
| 351-50 | Winzeler Excavating | \$ 476,890.30 | \$ 626,400.00 |
| 352-50 | Bercot, Inc. | <u>\$ 178,768.55</u> | <u>\$ 159,265.35</u> |
| TOTAL BIDS | | \$ 4,211,992.60 | \$ 5,610,262.10 |

DIFFERENCE: 1,398,269.50 = 24.92% Under Engineer's Estimate

NUMBER OF BIDS RECEIVED - 61

NUMBER OF BIDDERS - 20

JUNK DITCH STUDY AREA
December 16, 1980

Resolution No. 341-80

CONTRACTOR

BID

| | |
|--------------------------|------------|
| Winzeler Excavating | 644,070.50 |
| Dehner, John, Inc. | 669,963.85 |
| Ferrera, Rocco & Company | 688,920.00 |
| Bercot, Inc. | 704,974.10 |
| Waynesfield Construction | 793,896.00 |
| Busch, Inc. | 797,161.95 |

Resolution No. 342-80

| | |
|--------------------------|--------------|
| Winzeler Excavating | 1,282,562.00 |
| Dehner, John, Inc. | 1,329,013.80 |
| Busch, Inc. | 1,486,029.25 |
| Ferrera, Rocco & Company | 1,579,275.00 |

Resolution No. 345-80

| | |
|------------------------------|------------|
| Ness, Richard Excavating | 392,195.30 |
| Nobis Construction | 451,039.50 |
| Dailey, L.W., Inc. | 484,756.85 |
| Bercot, Inc. | 487,882.70 |
| Dehner, John, Inc. | 499,045.25 |
| T&F Construction Corporation | 505,808.79 |
| T-G Excavating | 536,809.55 |
| Ralph Reed & Sons, Inc. | 558,384.50 |
| Busch, Inc. | 895,634.00 |

Resolution No. 347-80

| | |
|------------------------------|------------|
| Ness, Richard Excavating | 181,495.25 |
| Lengacher Construction | 186,880.00 |
| Earth Construction | 202,784.55 |
| Hartman, John Construction | 202,880.00 |
| T-G Excavating, Inc. | 205,842.15 |
| Dailey, L.W., Inc. | 206,497.00 |
| Bercot, Inc. | 220,087.80 |
| Curner, Inc. | 233,235.50 |
| Hipskind Asphalt Corporation | 233,260.00 |
| T&F Construction Corporation | 245,402.35 |
| Allstar Construction | 278,758.75 |
| Moellering Construction | 283,291.25 |
| Fleming Excavating | 303,596.50 |

Resolution No. 348-80

| <u>CONTRACTOR</u> | <u>BID</u> |
|------------------------------|------------|
| Winzeler Excavating | 652,385.05 |
| Earth Construction | 727,745.00 |
| Dehner, John, Inc. | 814,860.55 |
| Fleming Excavating | 876,415.25 |
| Hipskind Asphalt Corporation | 899,922.00 |
| Busch, Inc. | 908,756.50 |
| Bercot, Inc. | 922,049.25 |
| Reed, Ralph & Sons, Inc. | 967,582.50 |

Resolution No. 349-80

| | |
|------------------------------|------------|
| T-G Excavating | 236,652.90 |
| Dehner, John, Inc. | 261,894.45 |
| Ness, Richard Excavating | 273,167.25 |
| Hipskind Asphalt Corporation | 288,470.00 |
| Bercot, Inc. | 323,090.45 |

Resolution No. 350-80

| | |
|------------------------------|------------|
| Ness, Richard Excavating | 166,972.75 |
| Earth Construction | 167,842.10 |
| Hartman, John Construction | 173,042.50 |
| T-G Excavating | 179,271.50 |
| Curner, Inc. | 192,379.70 |
| Hipskind Asphalt Corporation | 195,747.00 |
| T&F Construction Corporation | 199,799.90 |
| Bercot, Inc. | 214,198.40 |
| Fleming Excavating | 219,586.00 |

Resolution No. 351-80

| | |
|--------------------------|------------|
| Winzeler Excavating | 476,890.30 |
| Dehner, John, Inc. | 513,554.40 |
| T-G Excavating | 597,194.75 |
| Waynesfield Construction | 746,720.50 |
| Reed, Ralph & Sons, Inc. | 900,035.00 |

Resolution No. 352-80

| | |
|--------------------------|------------|
| Bercot, Inc. | 178,768.55 |
| Reed, Ralph & Sons, Inc. | 179,927.00 |

Admn. Appr. _____

DIGEST SHEET

S-81-02-25

TITLE OF ORDINANCE Junk Ditch Area Sanitary Improvements; Sewage Works Grant
No. C-180599-08; Sewer Resolution No. 347-80

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE A CONTRACT WITH RICHARD NESS EXCAVATING AND TRUCKING, INC.

TO CONSTRUCT 8 INCH+10 INCH LOCAL SANITARY SEWERS IN THE ADDITION OF
POPLAR RIDGE.

EFFECT OF PASSAGE Improvement to the water quality in the Junk Ditch Area with
the construction of sanitary sewers.

EFFECT OF NON-PASSAGE The loss of both Federal and State Grant Funds to
improve the City of Fort Wayne's environs.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) The construction of thi
project will cost \$ 181,495.25 which will be financed by USEPA 75%, State 10%
City Utilities 15%.

ASSIGNED TO COMMITTEE (PRESIDENT) _____